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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Lee Ward,

9 Plaintiff,

10 vs.

11 Figure Lending LLC,

12 Defendant.
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No. CV-23-08116-PHX-SPL

ORDER

15 Before the Court is Defendant's Motion to Dismiss the First Amended Class Action
16 Complaint (Doc. 46). This Motion is fully briefed. (Docs. 46, 48, 49). The Court rules as
17 follows.

18 **I. BACKGROUND**

19 On December 22, 2022, Plaintiff Lee Ward filed a Complaint initiating this putative
20 class action against Defendant Figure Lending, LLC in the Superior Court of Gwinnett
21 County, Georgia. (Doc. 1-1). Plaintiff's Complaint alleged five counts: (1) violation of the
22 Truth in Lending Act ("TILA"); (2) violation of TILA based on misleading and inadequate
23 disclosures; (3) breach of contract based on the assessment of excessive payoff amounts;
24 (4) breach of contract based on the assessment of post-closing fees; and (5) unjust
25 enrichment. (Doc. 1-1).

26 On February 3, 2023, Defendant removed this action to the United States District
27 Court for the Northern District of Georgia. (Doc. 1). On June 21, 2023, that court granted
28 Defendant's Motion to Transfer Venue and transferred the action to this Court. (Doc. 26).

1 On February 10, 2023, Defendant moved to dismiss Plaintiff's Complaint arguing, among
2 other reasons, that Plaintiff's TILA claims were barred by the statute of limitations. (Doc.
3 4). On August 3, 2023, the Court held that Plaintiff's TILA claims did not survive
4 Defendant's motion because Plaintiff failed to assert any facts in support of equitable
5 tolling. (Doc. 42 at 4). Although Plaintiff also alleged several state claims, the Court
6 dismissed the Complaint in its entirety because Plaintiff's TILA claims was the sole basis
7 for subject matter jurisdiction. (*Id.*). Nevertheless, the Court addressed Plaintiff's Motion
8 for Leave to File an Amended Complaint (Doc. 19) and held that "it may be possible for
9 Plaintiff to allege additional facts that support equitable tolling, so leave to amend will be
10 granted." (*Id.*).

11 On August 21, 2023, Plaintiff filed his First Amended Complaint ("FAC"). (Doc.
12 45). Plaintiff's FAC alleges all the state law claims listed in the initial Complaint. (Docs.
13 1-1, 45). However, Plaintiff's FAC removes the TILA claims as a cause of action and adds
14 an additional cause of action under the Arizona Consumer Fraud Act. Plaintiff also alleges,
15 for the first time, that subject matter jurisdiction applies under 28 U.S.C. § 1332(d).

16 On September 5, 2023, Defendant moved to dismiss Plaintiff's FAC and requested
17 an award of attorneys' fees and costs. (Doc. 46). Defendant argues that Plaintiff's FAC
18 should be dismissed because it exceeds the scope of amendment permitted by the Court
19 and lacks subject matter jurisdiction. (Doc. 49 at 6–8). For the following reasons,
20 Defendant's motion is granted.

21 **II. LEGAL STANDARD**

22 To survive a motion to dismiss under Federal Rule of Civil Procedure ("Rule")
23 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to state a
24 claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
25 (internal quotation marks omitted). A claim is facially plausible when it contains "factual
26 content that allows the court to draw the reasonable inference" that the moving party is
27 liable. *Id.* Factual allegations in the complaint should be assumed true, and a court should
28 then "determine whether they plausibly give rise to an entitlement to relief." *Id.* at 679.

1 Facts should be viewed “in the light most favorable to the non-moving party.” *Faulkner v.*
 2 *ADT Sec. Servs., Inc.*, 706 F.3d 1017, 1019 (9th Cir. 2013).

3 **III. DISCUSSION**

4 “[W]here leave to amend is given to cure deficiencies in certain specified claims,
 5 courts have held that new claims alleged for the first time in the amended pleading should
 6 be dismissed or stricken.” *Vahora v. Valley Diagnostics Lab’y Inc.*, No. 1:16-CV-01624-
 7 SKO, 2017 WL 2572440, at *2 (E.D. Cal. June 14, 2017). Here, the Court limited
 8 Plaintiff’s leave to amend his Complaint to include additional facts to support that his TILA
 9 claims are timely based on equitable tolling. (Doc. 42 at 4). But rather than adding facts to
 10 support his TILA claims and survive dismissal, Plaintiff withdrew these claims and pleaded
 11 an entirely new theory to establish federal jurisdiction. Therefore, Plaintiff’s new
 12 allegations are “outside the scope of the amendment permitted by the prior dismissal
 13 order.” *See Coppola v. Smith*, 19 F. Supp. 3d 960, 971 (E.D. Cal. 2014) (“Given these
 14 considerations, [Plaintiff’s] theory will be dismissed without leave to amend.”); *see also*
 15 *Benton v. Baker Hughes*, No. CV 12-07735 MMM MRWX, 2013 WL 3353636, at *3 (C.D.
 16 Cal. June 30, 2013), *aff’d sub nom. Benton v. Hughes*, 623 F. App’x 888 (9th Cir. 2015)
 17 (“The addition of [Plaintiff’s] new claims therefore exceeds the scope of the leave to amend
 18 granted, and it is appropriate to strike the newly added claims on this basis.”). Thus,
 19 Plaintiff’s FAC is dismissed because it does not comply with the limitations set by the
 20 Court and lacks subject matter jurisdiction.¹ Accordingly, the Court will not rule on the
 21 merits of Plaintiff’s claims which are all brought under state law.

22
 23 ¹ The Court rejects Plaintiff’s argument that subject matter jurisdiction applies under
 24 28 U.S.C. § 1332(d) because Plaintiff fails to offer evidence showing that the amount of
 25 controversy exceeds \$5 million dollars. *See Petkevicius v. NBTY, Inc.*, No.
 26 314CV02616CABRBB, 2017 WL 1113295, at *4 (S.D. Cal. Mar. 24, 2017) (citing *Ibarra*
 27 *v. Manheim Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015)) (“Plaintiff, as the proponent
 28 of jurisdiction, has the burden to put forward evidence showing that the amount in
 controversy exceeds \$5 million, to satisfy other requirements of CAFA, and to persuade
 the court that the estimate of damages in controversy is a reasonable one.”) (quotation
 omitted); *Id.* (“To hold otherwise, would essentially give any class action plaintiff license
 to file a claim in federal court simply by stating the legal conclusion that CAFA jurisdiction
 exists.”).

1 Accordingly,

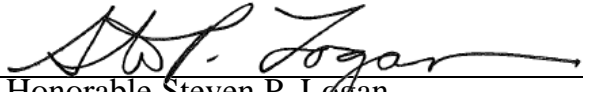
2 **IT IS ORDERED** that Defendant's Motion to Dismiss the First Amended Class
3 Action Complaint (Doc. 46) is **granted**.

4 **IT IS FURTHER ORDERED** that Defendant's request for attorneys' fees and
5 costs (Doc. 46) is **denied**.

6 **IT IS FURTHER ORDERED** that Plaintiff's claim is **dismissed without**
7 **prejudice**.

8 **IT IS FURTHER ORDERED** that the Clerk of Court shall terminate this action
9 accordingly.

10 Dated this 4th day of December, 2023.

11 
12 Honorable Steven P. Logan
13 United States District Judge
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